

## REMARKS

Claims 1-20 are pending. Claims 1, 7, 14, 17, and 20 are amended.

### Claim Rejections – 35 U.S.C. §103

Claims 1-15, 17, and 20 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Jenkins et al. (US 2002/0188499), hereinafter “Jenkins,” in view of Feldman et al. (US 2008/0027837), hereinafter "Feldman."

Claim 16 is rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Jenkins, in view of Feldman, and further in view of Chappel (US 7,236,940), hereinafter "Chappel."

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Jenkins, in view of Feldman, and further in view of Benda et al. (US 6,937,992), hereinafter "Benda."

Applicants respectfully assert that Claims 1-20 are patentable over the cited combinations in view of the following.

Applicants respectfully point out that the Examiner has the burden of establishing a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references

when combined) must teach or suggest all the claim features. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 2100-126. Specifically, "all words in a claim must be considered when judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d., 1382 (CCPA 1970).

Moreover, in response to the recent U.S. Supreme Court decision in *KSR Int'l Co. v. Teleflex, Inc.* (U.S. 2007), new guidelines were set forth for examining obviousness under 35 U.S.C. 103. The U.S. Supreme Court reaffirmed the *Graham* factors and, while not totally rejecting the "teachings, suggestion, or motivation" test, the Court appears to now require higher scrutiny on the part of the U.S. Patent & Trademark Office. In accordance with the recently submitted guidelines, it is "now necessary to identify the reason" why a person of ordinary skill in the art would have combined the elements of cited references, or at least describe the pertinence of the elements set forth in the cited disclosure, in the manner presently claimed.

Applicants respectfully assert the combination of Jenkins and Feldman fails to teach or suggest all the claimed elements of independent Claims 1, 17, and 20 in view of the following rationale.

Claim 1:

Claim 1 recites in part:

...using the processor to form a shipment plan by iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority, until one of all of the parts from inventory have been assigned and no customer location reports a need of more of the parts assigned, wherein each current priority is determined from all customer locations for each iteration (emphasis added).

Applicants respectfully assert that the combination of Jenkins and Feldman does not teach or suggest, "assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new priority,...wherein each current priority is determined from all customer locations for each iteration," as claimed in Claim 1.

Applicants respectfully assert and the rejection agrees that Jenkins does not teach or suggest "iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority, until one of all of the parts from inventory have been assigned and no customer location reports a need of more of the parts assigned," as claimed in Claim 1. Applicants respectfully assert that Feldman does not remedy the deficiencies of Jenkins.

As understood by Applicants, the rejection is reading "the incremental effect of one-by-one allocation of safety stock units to the Locations 1, 2, and 3, the column entitled "winning location" indicating which Location 1, 2, or 3 receives the next additional safety stock unit on the basis of its incremental availability being the greatest at any given prevailing draw allocation  $D^C$ " (Paragraph 0042), on Applicants' claimed "iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority," as claimed in Claim 1. Applicants respectfully disagree.

As understood by Applicants, Feldman teaches a distribution policy for single period inventory systems, wherein the available stock for distribution is allocated to the requesting locations based on a consideration of performance metrics such as product returns and product sellouts (Abstract; Paragraph 0016). In particular, Feldman teaches that a distribution policy should allocate available units on the basis of relative merit, rather than some arbitrary absolute fashion (Paragraph 0016). Feldman defines a single period inventory system as a system largely concerned with consumer items having a limited shelf life at the end of which an item loses most, if not all, of its consumer value, and the stock of which is not replenished to prevent an occurrence of a sellout (Paragraph 0012). In particular, Feldman teaches that expected occurrences of sellout for a location are compared to expected occurrences of return for the same location, as well as considering which location will contribute the most to a prevailing draw allocation  $D^C$  to

determine which location of a plurality of locations to allocate the remaining stock, even at the expense of the remaining locations that may have a greater need (i.e., priority) (Paragraph 0037-0042).

To the extent that Feldman discloses the distribution of available remaining stock to locations based upon an analysis of expected sellout versus expected return and a consideration of the location's contribution to a prevailing drawing allocation, Feldman does not teach or suggest "iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority, until one of all of the parts from inventory have been assigned and no customer location reports a need of more of the parts assigned," as claimed in Claim 1. Rather than assigning a defined minimum size allotment of the parts to a customer location having a current priority, as claimed in Claim 1, Feldman teaches that the allotment is assigned to a customer location based on performance metrics (such as which location will contribute the most to a prevailing draw allocation), rather than to the customer location with the highest priority or need.

Applicants further respectfully assert that there is no motivation to combine Jenkins and Feldman to realize "iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority, until one of all of the parts

from inventory have been assigned and no customer location reports a need of more of the parts assigned," as claimed in Claim 1. Jenkins discloses that those locations with the highest priority are provided with their requested allocations of the available stock until the available stock is depleted. Further, Jenkins only discloses an iterative allocation process for allocating the available products when there is coincident demand with the same priority and not enough supply to meet the demand (Jenkins, Paragraph 0205).

In other words, Jenkins teaches that all locations receiving stock according to the fair-share allocation method are assumed to have the same priority (Paragraph 0205). Therefore, the combination of Feldman with Jenkins will realize an allocation scheme that distributes the available stock to those locations of similar priority and coincident demand based on performance metrics of the individual locations of equal, highest priority. Applicants respectfully assert that "iteratively assigning a defined minimum size allotment of the parts to a customer location having a current priority and then reprioritizing the priorities of all customer locations and assigning a defined minimum size allotment of the parts to a customer location having a new current priority, until one of all of the parts from inventory have been assigned and no customer location reports a need of more of the parts assigned," as claimed in Claim 1, is not the same as allocating the available stock to those locations of similar priority and coincident demand based on performance metrics of the individual locations of equal, highest priority.

Therefore, Applicants respectfully assert that Claim 1 is not rendered obvious by the combination of Jenkins and Feldman. Accordingly, Applicants respectfully assert

that dependent Claims 2-15 are patentable by virtue of their dependency on patentable independent Claim 1, as well as for their additional recited patentable features.

Claim 16:

For at least the same or similar reasons as stated above, independent Claim 1 is not rendered obvious by the combination of Jenkins and Feldman. Applicants respectfully assert the deficiencies of Jenkins and Feldman are not remedied by Chappel. Accordingly, Applicants respectfully assert that dependent Claim 16 is patentable by virtue of its dependency on patentable independent Claim 1, as well as for its additional recited patentable features.

Claim 17:

Independent Claim 17 recites features similar to that of independent Claim 1 and is therefore patentable for at least the same or similar reasons as recited above.

Claims 18-19:

For at least the same or similar reasons as stated above, independent Claim 16 is not rendered obvious by the combination of Jenkins and Feldman. Applicants respectfully assert that the deficiencies of Jenkins and Feldman are not remedied by Benda. Accordingly, Applicants respectfully assert that dependent Claims 18-19 are patentable by virtue of their dependency on a patentable independent Claim 17, as well as for their additional recited patentable features.

Claim 20:

Independent Claim 20 recites features similar to that of independent Claim 1 and is therefore patentable for at least the same or similar reasons as recited above.

For the above reasons, Applicants request reconsideration and withdrawal of the rejections under 35 U.S.C. §103.



### CONCLUSION

In light of the above listed remarks, reconsideration of rejected Claims is requested. Based on the arguments presented above, it is respectfully submitted that Claims 1-20 overcome the rejections of record and, therefore, allowance of Claims 1-20 is earnestly solicited.

Please charge any additional fees that may be required to maintain pendency of the present application, or apply any credits to our PTO deposit account number: 50-4160.

Respectfully submitted,

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